more in curing the animal than it is worth. *Southern Ry. Co.* v. *Stearnes,* 8 Ga. App. 111, 68 S. E. 623; *Keyes* v. *Minneapolis, etc., Co.,* 36 Minn. 290, 30 N. W. 888.

CARRIERS—AGREED VALUATION OF GOODS—THEFT BY SERVANTS OF THE CARRIER.—The plaintiff, in order to obtain a lower freight rate, delivered goods to the defendant company for transportation from one state to another under an agreement limiting the amount of recovery in case of loss to $50, which was much less than the actual value of the goods. The defendant's rates were filed with the Interstate Commerce Commission as required by law. The goods were stolen by one of the company's servants, and the plaintiff sued to recover their full value. *Held,* the plaintiff can only recover $50, the agreed valuation. *D'Utassy* v. *Barrett* (N. Y.), 114 N. E. 786.

Common carriers are now generally allowed to limit their common law liability by just and reasonable limitation. *Railroad Co.* v. *Lockwood,* 17 Wall. 357; *Southern Exp. Co.* v. *Caldwell,* 21 Wall. 264. And where a bill of lading is delivered to a shipper and accepted by him, he is, by the weight of authority, presumed to have acquiesced in its provisions; and it becomes a valid contract of shipment between him and the carrier. *De Wolff* v. *Adams Exp. Co.,* 106 Md. 472, 67 Atl. 1099. The courts have never permitted the carriers to limit their liability for negligence. See *Railroad Co.* v. *Lockwood, supra.* But cases in which the carrier attempts to limit its liability for negligence must be distinguished from those in which the parties, in order to determine the amount of the freight charges, agree to a fixed valuation for the goods. Such agreements are quite generally upheld, even where the loss is occasioned by negligence. *Hart* v. *Pennsylvania R. Co.,* 112 U. S. 331; *Alair* v. *Northern Pac. R. Co.,* 53 Minn. 160, 54 N. W. 1072, 19 L. R. A. 764. But see *Baltimore & O. R. Co.* v. *Oriental Oil Co.,* 51 Tex. Civ. App. 336, 111 S. W. 979. And, where the shipper understands the conditions, the validity of a contract for agreed valuation is not affected by the fact that the carrier uses bills of lading which fix an arbitrary value for all packages unless a greater value is stated and a higher charge paid. *Pierce* v. *Wells Fargo Co.,* 189 Fed. 561. But some courts consider such arbitrary valuations merely an attempt to limit liability for negligence and do not enforce them. *Everett* v. *Norfolk & S. R. Co.,* 138 N. C. 68, 50 S. E. 557, 1 L. R. A. (N. S.) 985; *Hansen* v. *Great N. R. Co.,* 18 N. D. 324, 121 N. W. 78.

By the passage of the Carmack Amendment Congress manifested an intent to regulate interstate transportation of property by federal law to the exclusion of the states. *Adams Exp. Co.* v. *Croninger,* 226 U. S. 491; *Missouri, etc., R. Co.* v. *Harriman,* 227 U. S. 657. It was thought at first that this Act forbade common carriers to limit their liability and protect themselves by making their freight rates dependent upon the value of the articles transported. *Vigouroux* v. *Platt,* 62 Misc. 364, 115 N. Y. Supp. 800. But it has now been fully established that the Act does not prohibit this, and that a carrier may accomplish this by a bill of lading which declares that the goods shall be considered as having a certain value, unless a greater value is declared. *Adams Exp. Co.* v.

Croninger, supra; Boston & Maine R. v. *Hooker,* 233 U. S. 97. As to intrastate shipments the state law is, of course, controlling, and such agreements have been specifically prohibited by the laws of some states. *Chesapeake & O. R. Co.* v. *Pew,* 109 Va. 288, 64 S. E. 75.

Perhaps a majority of the courts take the view that while the agreed valuation is binding on the shipper where the loss is occasioned by the carrier's negligence, it should not be given effect where the loss is occasioned by the carrier's affirmative wrongdoing. *Adams Exp. Co.* v. *Berry & Whitmore Co.,* 35 App. D. C. 208, 31 L. R. A. (N. S.) 309. The reasons assigned for this view are that it would be contrary to public policy for the carriers to be able to lessen their liability for conversion. *Central of Ga. R. Co.* v. *Chicago Portrait Co.,* 122 Ga. 11, 49 S. E. 727; *Georgia, etc., Co.* v. *Houghart,* 90 Ala. 36, 8 South. 62. It has also been suggested that, since an action for conversion is purely a tort action, it is outside of the contract and not controlled by it. See *Adams Exp Co. v. Berry & Whitmore Co., supra.* But, as pointed out in the principal case, such holdings make the amount of recovery depend upon the form of the act, refuse to carry out the contractual intent of the parties, and are not justified by any real consideration of public policy.

CONTRACTS—ILLEGAL CONTRACTS—RECOVERY OF MONEY PAID.—A prize contest was conducted by the defendant newspaper association in order to increase its subscription list. The managing agent of the contest, without the defendant's knowledge, induced the plaintiff to pay him a certain sum of money under the agreement that the plaintiff would win the prize. Before the contest had closed, the plaintiff repudiated the agreement and demanded the return of his money from the defendant. This was refused, and the plaintiff brought an action to recover the money. *Held,* the plaintiff can recover. *Greenberg* v. *Evening Post Ass'n* (Conn.), 99 Atl. 1037.

The general rule is that no action will lie on an executed contract where both parties are equally guilty, the courts applying the maxim *in pari delicto potoir est conditio possidentis. Sampson* v. *Shaw,* 101 Mass. 145, 3 Am. Rep. 327. But there is a marked distinction between executed and executory contracts of an illegal nature; and the instant case brings up the point of whether or not there is a *locus pœnitentiæ* in executory contracts so that one *in pari delicto* may recover money advanced for the purpose of carrying out an illegal agreement. The better view would seem to be that there is a *locus pœnitentiæ* in such cases. Thus, where one enters into a simulated race, but repudiates the contract and demands his money back before the race is run, he is entitled to recover. *Falkenberg* v. *Allen,* 18 Okl. 210, 90 Pac. 415, 10 L. R. A. (N. S.) 494. And money which is wagered illegally and deposited with a stakeholder, who is later notified not to deliver it to the winner, may be recovered from the winner. *Love v. Harvey,* 114 Mass. 80. *A fortiori,* one who wagers his money may recover it from the stakeholder at any time before it is paid out. *Stacy* v. *Foss,* 19 Me. 335; *Dunn* v. *Drummond,* 4 Okl. 461, 51 Pac. 656. See *Bernhard* v. *Taylor,* 23 Or. 416, 31 Pac. 968.

Where the contract is merely *malum prohibitum* and remains executory, it is generally held that the contract may be disaffirmed and money